

**In the Matter of  
REQUEST FOR REVIEW and/or  
WAIVER OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR**

**CENTRAL VALLEY SCHOOL DISTRICT 356  
Spokane Valley, Washington**

**CC Docket No. 02-6**

Re:    Applicant Name:                    CENTRAL VALLEY SCHOOL DISTRICT 356  
      Billed Entity No:                    145441  
      Form 471 App. No.:                  937602  
      Funding Request No.:                2560304  
      Funding Year:                        2014-2015  
      Decision Request Date:              July 1, 2016  
      Decision on Request Date:          September 1, 2016

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**I.     INTRODUCTION**

Pursuant to 47 C.F.R. § 54.719(c), the Central Valley School District 360 (the "District") appeals to the FCC from the Universal Service Administrative Company, Schools & Libraries Division ("USAC") Administrator's Decision on Good Samaritan Request dated September 1, 2016. That decision denied the District's Billed Entity Application Form ("BEAR"), finding that the service provider, Eman Networks, did not file a Funding Year 2014 FCC Form 473 Service Provider Annual Certification ("SPAC") related to FRN 2560304. As set forth in the FCC Form 472 Instructions, "The applicant should prepare and submit a BEAR form...when ALL of the following conditions occur:...4. The service provider has filed an FCC Form 473." (Attachment 3

at p.1.) USAC informed the District that only the FCC could waive that “program rule” (Attachment 1, Explanation at p. 1).

USAC’s denial of the District’s BEAR is based on the premise that a SPAC is required before USAC can approve the District’s Good Samaritan request. However, a SPAC is not set forth by USAC as a requirement or “guiding principle” of the Good Samaritan process (Attachment 4 ). Such a requirement from a service provider who is no longer in the picture is inconsistent with the very purpose of the Good Samaritan process.

The District initially requests that the FCC waive any rule that the SPAC for Funding Year 2014 be filed before the District is entitled to its E-rate eligible reimbursement. As set forth below, good cause exists for waiver of any such rule.<sup>1</sup>

In the event that the FCC agrees with the District that a SPAC is not a requirement of the District’s Good Samaritan request, the District requests a reversal of USAC’s decision in that regard. In short, whether through the granting of a waiver, or through a reversal of USAC’s decision, the District seeks an FCC remand to USAC for review, analysis, and a determination on the merits of the District’s request for E-rate eligible reimbursement.

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<sup>1</sup> The FCC may waive any provision of its rules for good cause shown. 47 C.F.R. §1.3; *In the Matter of Request for Review and/or Waiver of the Decision of USAC by Glendale Unified Sch. Dist.*, CC Docket No. 02-6, SLD-143548, DA 06-244, at para. 4 (February 1, 2006).





## II. ATTACHMENTS

In support of this Request for Review and/or Request for Waiver, the District provides the following documents:

- Attachment 1: Administrator's Decision on Good Samaritan Request, September 1, 2016.
- Attachment 2: USAC correspondence to Shirley Bauer, Ed.D., containing Dr. Bauer's Submit a Question, July 20, 2016.
- Attachment 3: FCC Form 472 Instructions, July 2013.
- Attachment 4: USAC Good Samaritan program requirements.
- Attachment 5: Contract for Installation and Services between the District and Eman Networks for WAN Fiber Services dated February 12, 2003.
- Attachment 6: SPIN and BEAR Contact Search Results showing SPAC filings by Eman Networks, SPIN 143026476, for Funding Year 2003 through Funding Year 2013.
- Attachment 7: Affidavit of Greg Green, President, Fatbeam, LLC, dated February 2, 2016.
- Attachment 8: Emails from Dr. Bauer to Eman Networks dated June 5, and June 16, 2015.
- Attachment 9: Email from Michael Kraft at USAC to Dr. Bauer dated January 25, 2016.

## III. STATEMENT OF FACTS

The District is a public school district serving approximately 13,000 students in the state of Washington's Spokane Valley. The District contracted with Eman Networks for WAN Fiber Services from Funding Years 2003 through 2015 (Attachment 5). Eman Networks has filed the required SPACs for all of those funding years with the exception

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of Funding Year 2014 (Attachment 6). It has failed and refused to file that SPAC despite repeated requests for it to do so. The District, through its Consultant, Shirley Bauer, Ed.D., E-Rate & Educational Services LLC, Consultant #16062408, made numerous requests to Eman Networks, including those on June 5, 2015, and June 16, 2015, (Attachment 8). USAC itself made such a request (Attachment 9). The District is now receiving those services through another service provider, Fatbeam LLC (Attachment 7).

#### IV. DISCUSSION

Prior decisions of the FCC have waived procedural requirements when good cause exists for doing so. Good cause is found when special circumstances, consideration of hardship, equity principles, and the public interest support the granting of the waiver.<sup>2</sup> Good cause exists in this case. The failure of Eman Networks to file the SPAC was without precedent, unexpected, distressing, and beyond the control of the District—yet, it is the District that is suffering the resulting financial harm.

The FCC's determination to grant waivers when good cause exists is not surprising in light of the dictates of The Communications Act of 1934. This Act directs the FCC to "enhance ... access to advanced telecommunications and information services

<sup>2</sup> *Streamlined Resolution of Requests Related to Actions by USAC*, CC Docket Nos. 96-45 and 02-6, DA 15-875 at p. 4; *Request for Waiver by Marconi Communications, Inc.: Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Recd 6197 at para. 2 (Wireline Comp. Bur. 2012); *In the Matter of Requests for Waiver of Decisions of the Universal Service Administration by Ada School District*, CC Docket No. 02-6, SLD 963751 *et al.* (April 25, 2016).

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for all public and non-profit elementary and secondary school classrooms.”<sup>3</sup> A denial of funding based on procedural errors “inflicts undue hardship on the applicants.”<sup>4</sup>

The FCC has repeatedly acknowledged such hardship as a reason for waving its procedural rules.<sup>5</sup>

Moreover, we find that denying petitioner’s requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. By contrast, waiving . . . our rules to the limited extent necessary . . . will further the goal of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore serve the public interest.<sup>6</sup>

## V. CONCLUSION

For the reasons set forth above, the District respectfully requests that the Commission either grant the requested waiver, or reverse USAC’s decision, and remand to USAC for a review, analysis, and determination on the merits of the District’s request for E-rate eligible reimbursement.

<sup>3</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library*, CC Docket No. 02-6, SLD 140961 *et. al.*, at para. 8.

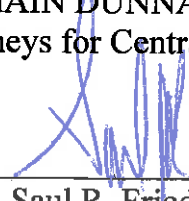
<sup>4</sup> *Id.*

<sup>5</sup> *In the Matter of Requests for Review or Waiver of Decisions of the Universal Service Administrator by Brownsville Independent School District*, CC Docket No. 02-6, SLD-482620, *et. al.*, at para. 10 (March 28, 2007).

<sup>6</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence, et al.*, CC Docket No. 02-6, SLD-261209, *et. al.*, at para. 9 (May 8, 2007).

DATED at Anchorage, Alaska this 10<sup>th</sup> day of October, 2016.

JERMAIN DUNNAGAN & OWENS, P.C.  
Attorneys for Central Valley School District 356

By:   
Saul R. Friedman  
Alaska Bar No. 7205010

**CERTIFICATE OF SERVICE**

This is to certify that on this 11<sup>th</sup> day of  
October, 2016, a true and correct copy of  
the foregoing was mailed, postage prepaid, to:

Schools and Libraries Division  
Universal Service Administrative Company  
30 Lanidex Plaza West  
P.O. Box 685  
Parsippany, New Jersey 07054-0685

  
Carin E. Flug

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